HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.23311 of 2006

Between:

M/s.Gajula Exim (P) Limited,
Rep. by its Managing Director,
Nageswara Rao, Visakhapatnam

... Petitioner

And

The Authorised Officer,
M/s.Andhra Bank, Main Branch,
Visakhapatnam and others.

... Respondents

:: ORDER::

Counsel for the Petitioner: Shri S. Ashok Anand Kumar

November 10, 2006

Per G.S. Singhvi, CJ

This is a petition for quashing orders dated 21-8-2006 and 20-9-2006 passed by Debts Recovery Tribunal, Visakhapatnam (for short, 'the Tribunal') and Debts Recovery Appellate Tribunal, Chennai (for short, 'the Appellate Tribunal') respectively, whereby they rejected the petitioner's prayer for unconditional stay of the action initiated by Andhra Bank (for short, 'the bank') under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') for recovery of its dues.

The petitioner is a private limited company. It is engaged in the business of processing and exporting sea food. On an application made in that behalf, the bank, vide its letter dated 5-4-2004 sanctioned various financial facilities in favour of the petitioner. The details of these facilities are:

a) PC/PCFC Running Account facility: Rs.275 lakhs
b) FDBP/FUBD/RVBA: Rs.150 lakhs
c) Term Loan: Rs.130 lakhs

In terms of the letter of sanction and subsequent agreement entered into between the parties, the petitioner was required to repay the loan etcetera on the specified dates, which it failed to do. Therefore, the bank initiated proceedings under the Act. In the first instance, notice dated 14-12-2005 was issued under Section 13(2), whereby the petitioner was called upon to pay Rs.6,76,73,457.35ps. within a period of sixty days. In its reply, the petitioner disputed the total amount payable to the bank and requested that an arbitrator be appointed under the Arbitration and Conciliation Act, 1996. Simultaneously, a request was made for One Time Settlement of the amount due. The bank did not accept the request of the petitioner and issued notices dated 10-3-2006, 25-3-2006 and 26-4-2006 under

Section 13 (4) of the Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002 (for short, 'the Rules'). At that stage, the petitioner filed an application under Section 17 of the Act along with an application for stay. The same were registered as S.A.No.25 of 2006 and I.A No.107 of 2006 respectively. On receipt of the notice issued by the Tribunal, the opposite parties i.e., Authorised Officer of the bank, Deputy General Manager, Visakhapatnam Branch and Chairman-cum-Managing Director filed reply. They not only questioned the very maintainability of the application filed by the petitioner under Section 17 of the Act, but also pleaded that there was no justification for stalling the action initiated for recovery of the dues.

After considering the rival pleadings and arguments, the Tribunal passed an order dated 21-8-2006 and stayed the proceedings initiated by the bank subject to the condition that the petitioner shall pay Rs.50,00,000/- within 30 days and deposit Rs.15,00,000/- every month on or before tenth day of the month commencing from September 2006. Paragraphs 13 to 15 of that order read as under:

> "13. At the time of arguments, the respondent filed affidavit stating that the unit is functioning in full stream and is carried on business of processing and packing of shrimp for two companies namely M/s.SMSEA and M/s.Tejaswi Enterprises of Visakhapatnam and enquiry is revealed that they processed shrimp worth Rs. 4 crores for SMSEA for Rs.2 crores for Tejaswi enterprises. The gross income per day will in the Rs.1.5 lakhs. At the rate, the job work charges comes to Rs.45 lakhs per month and Rs.1.35 crores in three months and net income will be Rs.60 to 70 lakhs even if job work is undertaken for three months in a year. Now, presently the industry is running and therefore it is not advisable to stop running the industry and close the same. The petitioner is getting income of Rs.60 lakhs to Rs.70 lakhs for three months

and the total liability to the bank according to the possession notice issued by the bank is in the order of Rs.6,76,73,457.35 and even taken into consideration the OTS offer made by the petitioner which is Rs.1.75 crores.

14. The notices issued under Section 13 (4) of the Securitisation Act are not only in respect of the land in question but also to the other properties which are urban properties and so far as the urban properties are concerned, there is no dispute with regard to the nature of the property. Admittedly, they are buildings and plots. Therefore, in these circumstances, condition of depositing of certain amount can be imposed in respect of other properties while granting any stay, even taken into consideration the decision of their Lordship reported in 2005 (4) ALT 136 D.B. so far as this particular land in question for which it has to be decided whether it is agricultural or non-agricultural, unconditional stay granted. So far as other properties are concerned, the stay is conditional.

15. In the above circumstances and taking into consideration of the principles of natural justice, the conditional stay is granted directing the petitioner to pay an amount of Rs.50 lakhs within 30 days from the date of this order in the first instance and further directed to deposit Rs.15 lakhs every month on or before 10th of every month commencing from September, 2006 during pendency of the Appeal failing which this stay stands vacated and the respondent is entitled to proceed under the provisions of the Securitisation Act."

Feeling aggrieved by the aforementioned order of the Tribunal, the petitioner filed an appeal under Section 20 of the Act along with an application for stay, which was registered as I.A.No.567 of 2006. After hearing the counsel for the parties, the Appellate Tribunal modified order dated 21-8-2006 passed by the Tribunal and stayed the proceedings initiated by the bank subject to the condition that the appellant (petitioner herein) shall deposit a total sum of

Rs.50,00,000/- out of which Rs.25,00,000/- shall be paid on or before 14-10-2006 and the balance of Rs.25,00,000/- on or before 15-11-2006.

Shri S. Ashok Anand Kumar, learned counsel for the petitioner argued that the impugned orders are liable to be declared nullity because the Act does not empower the Tribunal and the Appellate Tribunal to compel the borrower to pay a portion of the amount due to the bank as a condition precedent for stay of the proceedings initiated under the Act. He referred to the provisions of the Act and Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and argued that once an application is filed under Section 17 of the Act, the Tribunal is bound to stay the proceedings without requiring the applicant to deposit the disputed amount or a part thereof. Learned counsel further argued that the bank's failure to act on the offer of One Time Settlement made by the petitioner should be treated as sufficient for staying the notices issued under Sections 13 and 14 of the Act. He relied on the judgment of the Supreme Court in **Mardia Chemicals Ltd. v. Union of India**[1] and of this Court in **Neel Madhav Mining Pvt. Ltd. v. Authorised Officer, Union Bank of India**[2] and argued that the conditions imposed by the Tribunal and the Appellate Tribunal for deposit of a part of the disputed amount should be declared as unreasonable, unconscionable and onerous and be struck down.

We have given serious thought to the arguments of the learned counsel, but have not felt impressed. Section 17 of the Act, which has bearing on the decision of this petition, reads as under:

> "**17. Right to appeal.-**(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his

authorized officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures has been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.-For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more assets as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of Section 13, is in accordance with the provisions of this Act and the

rules made thereunder, then notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of Section 13 to recover his secured debt.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, disposed of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."

A reading of the provisions reproduced above makes it clear that under Section 17(1), any person (including borrower) can file an application and question the action taken by the secured creditor or his authorized officer under Section 13(4) of the Act. Once such an application is filed, the Tribunal acquires jurisdiction to consider whether the action taken by the secured creditor is in accordance

with law. If the Tribunal comes to the conclusion that there has been violation of the statutory provisions and that management of the business or possession of the secured assets is required to be restored to the borrower, then it can pass such an order. There is no express provision in Section 17 under which the Tribunal can stay the proceedings initiated by the secured creditor under Section 13(4), but this power can be read as implicit in the exercise of quasi-judicial power vested in the Tribunal. As a necessary concomitant, it must be held that the Tribunal can impose appropriate condition for stay of the proceedings initiated by the creditor and unless the conditions are found to be wholly unreasonable, the High Court cannot interfere with the discretion exercised by the Tribunal.

In the present case, the total amount due from the petitioner is more than 6,76,73,000/-. The Tribunal directed the petitioner to pay Rs.50,00,000/- within 30 days and further deposit Rs.15,00,000/- every month. The Appellate Tribunal substantially diluted the rigor of the conditions imposed by the Tribunal and directed the petitioner to pay a sum of Rs.50,00,000/- only as a condition for staying the proceedings initiated by the bank. In our view, the conditional order passed by the Tribunal is most reasonable and fair and does not call for interference under Article 226 of the Constitution. In this context, it is apposite to observe that the Act was enacted by the Parliament for ensuring speedy recovery of the dues of banks and other similar creditors. Therefore, the Tribunals and the Court cannot frustrate the action initiated by the banks etc., by granting stay merely for asking without requiring the debtor/borrower to pay at least a part of the amount due.

The judgments of the Supreme Court in **Mardia Chemicals Ltd. v. Union of India** and of this Court in **Neel Madhav Mining Pvt.**

Ltd. (supra) have no bearing on this case. In **Mardia Chemicals Ltd. v. Union of India** (supra), the Supreme Court had considered the challenge to the constitutionality of the Act and negatived the same except sub-section (2) of Section 17 (unamended) in terms of which, the party seeking intervention of the Tribunal was required to deposit 75% of the disputed amount as a condition precedent to the entertaining of appeal. The Supreme Court ruled that the condition of pre-deposit is bad rendering the remedy illusory. This is evident from paragraph 64 of the judgment, which is extracted below:

> "**64**. The condition of pre-deposit in the present case is bad rendering the remedy illusory on the grounds that: (*i*) it is imposed while approaching the adjudicating authority of the first instance, not in appeal, (*ii*) there is no determination of the amount due as yet, (*iii*) the secured assets or their management with transferable interest is already taken over and under control of the secured creditor, (*iv*) no special reason for double security in respect of an amount yet to be determined and settled, (*v*) 75% of the amount claimed by no means would be a meagre amount, and (*vi*) it will leave the borrower in a position where it would not be possible for him to raise any funds to make deposit of 75% of the undetermined demand. Such conditions are not alone onerous and oppressive but also unreasonable and arbitrary. Therefore, in our view, sub-section (2) of Section 17 of the Act is unreasonable, arbitrary and violative of Article 14 of the Constitution."

In the aforementioned case, the Supreme Court did not consider the question whether, in exercise of power vested in it under Section 17 of the Act, the Tribunal can stay the proceedings initiated by the bank etc., under Sections 13 and 14 of the Act and if so, whether such an order can be hedged with the condition of deposit of the disputed amount or a part thereof. Therefore, that judgment cannot

be treated as an authority for the proposition that as and when an application is instituted by the borrower under Section 17, the Tribunal is duty bound to unconditionally stay the proceedings initiated by the creditor.

The judgment of the Division Bench in **Neel Madhav Mining Pvt. Ltd.** (supra) is also of no help to the petitioner's cause. What the Division Bench has held in that case is that if the condition imposed by the Tribunal is unreasonable, this Court can interfere with the same. There is nothing in the judgment from which it can be interfered that the Tribunal is precluded from imposing condition requiring the debtor/borrower to pay a part of the disputed amount to the creditor.

For the reasons mentioned above, the writ petition is dismissed.

As a sequel to dismissal of the main petition, WPMP Nos.29694 and 29807 of 2006 filed by the petitioner for grant of interim reliefs are also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

November 10, 2006

svs

[1] (2004) 4 SCC 311

[2] (2005) 4 ALT 136